

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON 25, D. C.

JUN 9 1958

My dear Mr. Director:

Reference is made to your letter of December 13, 1957, and to the draft Executive Order transmitted therewith which would designate the Central Intelligence Agency as a defense agency within the meaning of chapter 17 of title 35, United States Code.

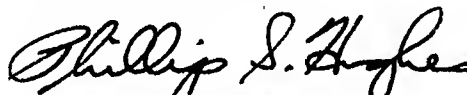
Enclosed herewith are copies of letters of February 12, 1958 from the General Manager of the Atomic Energy Commission, and of June 4, 1958 from the General Counsel of the Department of Defense.

The General Manager of the Atomic Energy Commission for the reasons set out in his letter recommends that, for purposes of clarity, the draft order make a qualified designation limited to patent applications which do not involve Restricted Data.

The General Counsel of the Department of Defense suggests that a conference be held by representatives of that Department, the Central Intelligence Agency, and the Commissioner of Patents so that the Department of Defense, before expressing its position with respect to the draft order, may receive a more extensive briefing as to the need therefor.

In the circumstances this office will withhold further action on the draft order pending receipt of your advice in the premises.

Sincerely yours,



Assistant Director for
Legislative Reference

Honorable Allen W. Dulles

Director, Central Intelligence
Agency

Enclosures

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
Washington 25, D. C.

June 4, 1958

Dear Mr. Stans:

Reference is made to your request for our views on the proposed Executive Order which would designate the Central Intelligence Agency as a defense agency within the meaning of chapter 17 of title 35, United States Code.

Section 181 of chapter 17 authorizes the Commissioner of Patents, upon the request of the Atomic Energy Commission, the Secretary of Defense, or such other department or agency of the Government designated by the President as a defense agency of the United States, to issue orders to keep secret the inventions, disclosure of which would be harmful to the National Security.

The Department of Defense does not fully understand the needs of the Central Intelligence Agency as expressed in this request. The Department of Defense is concerned over the possibility that section 181 will be extended to cover a number of agencies and that conflicting actions might arise from such a situation.

This Department recommends that a conference be held with representatives of this Department, who handle such matters for the Department of Defense, the appropriate authorities within the Central Intelligence Agency, and the Commissioner of Patents to determine the basis upon which this Department could concur or non-concur in the proposed Executive Order after receiving a more extensive briefing on the needs of the proposing agency.

Should the Executive Order be approved, we would request that an agreement be reached between this Department and the Central Intelligence Agency whereby each would be apprised of the other's actions so that the two agencies would not be recommending conflicting actions to the Commissioner of Patents. This Department has such an agreement with the Atomic Energy Commission.

For the foregoing reasons, this Department defers comment on the proposed Executive Order until such time as a clearer understanding is reached.

Sincerely yours,


Robert Dechert

Honorable Maurice H. Stans

Director, Bureau of the Budget

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON 25, D. C.

FEB 12 1958

Mr. Roger W. Jones
Assistant Director
Legislative Reference
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Jones:

This is in response to your letter to Mr. Strauss dated January 13, 1958, requesting an expression of the AEC's views with respect to a proposed Executive Order designating the Central Intelligence Agency as a defense agency under and for the purposes of Chapter 17, Title 35, United States Code. For the reasons set forth below, we cannot concur in the proposed Executive Order as it now stands.

As we understand the proposed Executive Order, it would authorize the Central Intelligence Agency to require the imposition of secrecy orders upon patent applications, the public disclosure of which would, in the opinion of that Agency, be detrimental to the national security.

As you will recall, Sections 141 and 142 of the Atomic Energy Act of 1954 give the Atomic Energy Commission primary responsibility for control of the dissemination and declassification of Restricted Data. When the Commission and the Department of Defense jointly determine that Restricted Data relates primarily to the military utilization of atomic weapons, determinations relating to its dissemination and declassification are to be made jointly by the Commission and the Department of Defense. Decisions relating to the dissemination and declassification of Restricted Data are based, for the most part, upon technical scientific considerations peculiarly within the competence of the AEC and within the competence of the DOD to the extent recognized by Section 142 of the Atomic Energy Act of 1954. It is our belief the Congress, fully cognizant of the technical ability necessary for sound decisions in this area, intended to vest the authority for such determinations in those hands where the peculiar skill rests. This conclusion is based upon Section 146(a) of the Atomic Energy Act of 1954, read in conjunction with Section 142, which states:

"Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of these sections."

Mr. Roger W. Jones

- 2 -

This quoted section of the 1954 Act is substantially identical to Section 10(b)(6) of the Atomic Energy Act of 1946. What Congress intended by including that provision in the 1946 Act is indicated by a statement on page 24 of Senate Report 1211, 79th Congress, 2d Session, which said that subsection 10(c)(5) (the section reference of the 10(b)(6) provision in the draft bill then being discussed) "prohibits any agency from placing information in a restricted category under the authority of this or any other law once such information has been released from the category by the official action of the Atomic Energy Commission." (Emphasis added.)

We construe the above language as a clear indication that the Congress did not intend any agency except the Atomic Energy Commission, and the Department of Defense to the extent indicated by Section 142 of the 1954 Act, to control the dissemination and declassification of Restricted Data, and we believe that this is the only possible statutory interpretation, with regard to Restricted Data, when the Atomic Energy Act and Section 181 of Title 35, U. S. Code, are read together. Thus, to the extent that the administration of Chapter 17 of Title 35 is to be broadened by an Executive Order designating an additional agency as a defense agency, we would recommend, for purposes of clarity, that such an order make a qualified designation limited to patent applications which do not involve Restricted Data. Such a qualification would, in our opinion, avoid defeating the Congressional intent as regards Restricted Data.

Sincerely yours,

Signed - K. E. Fields

General Manager

TRANSMITTAL SLIP DATE 2 July 1958

TO	
FROM	

REMARKS:

Please keep together w/papers
you have on this subject. LRH may
have need to call for them.

J.

FROM:

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Remarks:

FOR ACTION PER OUR TELEPHONE CONVERSATION.

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FROM: NAME	ADDRESS AND PHONE NO.	DATE
		10 June 58